

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

MICHAEL C PEACH,

Petitioner,

VS.

DAN JOSLIN,

Respondent.

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CIVIL ACTION NO. C-10-20

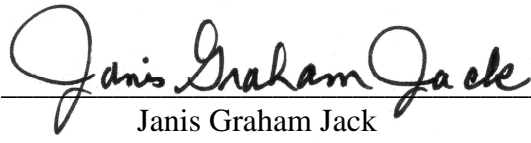
**ORDER ADOPTING MEMORANDUM AND RECOMMENDATION**

On September 10, 2010, United States Magistrate Judge B. Janice Ellington signed a Memorandum and Recommendation recommending that respondent's motion to dismiss (D.E. 16) be granted; and that petitioner's 28 U.S.C. § 2241 cause of action be dismissed because he has failed to show that he is entitled to bring it under the savings clause of 28 U.S.C. § 2255 and also because he has failed to show that Neder v. United States, 527 U.S. 1, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999), is retroactively applicable on collateral review. A copy of the Memorandum and Recommendation was mailed to petitioner with a card to be returned indicating his receipt of the mailing. The card has not been returned by petitioner nor has the mailing been returned by the U.S. Post Office as undeliverable. Therefore, seeing no objection to this recommendation by either party and having now reviewed the recommendation, this Court hereby adopts as its own the Memorandum and Recommendation as the decision of the Court. Accordingly, it is

ORDERED that respondent's motion to dismiss is granted and petitioner's 28 U.S.C. § 2241 cause of action is dismissed because he has failed to show that he is entitled to bring it under the savings clause of 28 U.S.C. § 2255 and also because he has failed to show that Neder is retroactively applicable on collateral review.

The clerk shall enter this order and provide a copy to all parties.

SIGNED and ORDERED this 17th day of November, 2010.

  
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Janis Graham Jack  
United States District Judge